

31399

SERVICE DATE - NOVEMBER 9, 2000

EB

FR-4915-00-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Released Rates Decision No. MC-999]

AGENCY: Surface Transportation Board.

ACTION: Notice of filing of an application to amend released rate provisions (and corresponding limits of liability) for motor-carrier shipments of household goods, and request for public comments.

SUMMARY: The Household Goods Carriers' Bureau Committee (Committee), on behalf of its member motor carriers, seeks authority to amend Released Rates Decision No. MC-999 by changing the terms under which the carriers would limit their liability for damage to, or loss of, household-goods shipments, and thus changing the resulting charges to shippers.

DATES: Comments are due December 11, 2000.

ADDRESSES: Send comments (an original and 10 copies) referring to Released Rates Decision No. MC-999, to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, D.C. 20423-0001.

FOR FURTHER INFORMATION CONTACT: James W. Greene, (202) 565-1578, or Lawrence C. Herzig, (202) 565-1576. [TDD for the hearing impaired: (202) 565-1695.]

SUPPLEMENTARY INFORMATION:

1. Background. Under 49 U.S.C. 14706(a)(1), motor carriers of household goods

ordinarily are liable for the actual loss or injury that they cause to the property they transport.¹ However, under 49 U.S.C. 14706(f), household-goods carriers may establish “released rates,” under which the carriers’ liability is limited to a value established by written declaration of the shipper or by a written agreement between the carrier and shipper, if they obtain permission from the Board.²

2. Current Provisions. The released rates currently offered by most household-goods carriers are based upon authority granted by the Board’s predecessor, the Interstate Commerce Commission (ICC), in Released Rates of Motor Common Carriers of Household Goods, 9 I.C.C.2d 523 (1993). Under the plan approved in 1993, the freight charges paid by a household-goods shipper depend upon the level of liability assumed by the carrier. A shipper pays the carrier’s lowest rate, the “base rate” when it agrees, by indicating in writing on the bill of lading, that the carrier’s liability will be 60 cents per pound per article for goods lost or damaged, but not more than the actual, depreciated value of the item. According to the Committee, the percentage of household-goods shippers choosing to move their goods under the 60-cents-per-pound limitation on liability remained relatively constant from 1985 through 1996, decreasing from 33.1 to 31.2 percent.³

A second option available to shippers allows them to protect more of the value of the shipment for a higher transportation charge. The shipper declares a lump sum value for the entire

¹ Carriers are not liable for loss or injury that they do not cause, such as losses due to acts of God.

² Motor carriers of freight other than household goods may establish released rates without having to obtain the Board’s permission. 40 U.S.C. 14706(c)(1)(A).

³ The 60-cent limitation predates the 1993 plan. See Household Goods Carriers’ Bureau v. ICC, 584 F.2d 437, 439 (D.C. Cir. 1978).

shipment, and pays the base rate plus a charge of 70 cents for each \$100, or fraction, of the “declared value” of the shipment. Under this second option, there is a minimum valuation: if the shipper’s declared value is less than \$1.25 times the weight (in pounds) of the shipment, the minimum declared value of \$1.25 per pound will apply instead. The recovery under this option for lost goods is the actual (depreciated) value of the (typically used) goods up to the declared value of the shipment.⁴

Many carriers today also offer a third option for an even higher charge: “full value protection” (FVP) within broad ranges of declared values in which the carrier is liable for the full replacement value of items, up to the declared value of the shipment.⁵ The breadth of the ranges of declared values to which a single charge applies under this third option is greater than the \$100 increments provided under the second option. The Committee states that, from 1985 through 1996, shippers’ election of FVP increased from 38.8 to 55.4 percent of shipments.

Under any of these options, when goods are damaged rather than lost, the carrier has the option of paying the cost of repairs to restore the damaged goods to their prior condition.

3. The New Proposal. The Committee now proposes to offer only two options rather than three. It would retain the same first option of paying a base rate, for which the carrier’s liability is limited to 60 cents per pound per article. The only other option would be an FVP option based upon a declared value for the shipment. It would differ from the currently available

⁴ Of course, if the carrier lost an item that was new and unused, it would be liable for the replacement value of the item. In that case, the “actual value” of the lost item would be its new, or replacement, value.

⁵ We note that the protection under the third option could amount to less than full value if a shipper chose a declared value that is less than the replacement cost for all of the items in its shipment and the entire shipment were lost.

options in two ways. First, there would be no choice under which the carrier is liable for the actual, depreciated value of the goods lost or damaged. Rather, the carriers would be liable for full replacement value. Second, the minimum declared value for shipments would increase from \$1.25 to \$4.00 times the weight of the shipment (in pounds). The Committee established this figure after concluding that \$4.00 per pound, rather than \$1.25 per pound, more closely approximates the average value of recent household-goods shipments.

The proposed FVP option would use the broad ranges of declared values from the current FVP option that many carriers offer. At the lower end, the valuation charge would increase as the declared values increased in \$5,000 increments. As the declared values go up, the increments to which a single valuation charge would apply also would expand, up to \$25,000 worth of declared values. The proposed ranges of declared values and corresponding charges are:

<u>Declared Value</u>	<u>Charge</u>	<u>Declared Value</u>	<u>Charge</u>
\$0 to \$5,000	\$76	\$60,001 to \$75,000	\$508
\$5,001 to \$10,000	\$113	\$75,001 to \$100,000	\$624
\$10,001 to \$15,000	\$149	\$100,001 to \$125,000	\$754
\$15,001 to \$20,000	\$182	\$125,001 to \$150,000	\$825
\$20,001 to \$25,000	\$216	\$150,001 to \$175,000	\$933
\$25,001 to \$30,000	\$258	\$175,001 to \$200,000	\$1,041
\$30,001 to \$35,000	\$298	\$200,001 to \$225,000	\$1,155
\$35,001 to \$40,000	\$338	\$225,001 to \$250,000	\$1,280
\$40,001 to \$50,000	\$380	Over \$250,000	\$1,280 plus \$.50 for
\$50,001 to \$60,000	\$440		each \$100, or fraction
			thereof, in excess of
			\$250,000 declared value.

Within any of the proposed valuation ranges, lower charges would apply if the shipper elects a \$250 or \$500 deductible. If goods were lost, the carrier would be fully liable for the loss of the property, at its replacement value with no reduction for depreciation, up to the declared value of

the shipment.⁶

If a shipper did not, in writing, either select the 60-cents-per-pound-per-article limit or declare a value for the shipment, the declared value would be deemed to be \$4.00 times the weight of the shipment in pounds. Also, when goods are damaged, the carrier would retain the option of paying repairs to restore the damaged items to their condition when the carrier received them, up to the declared value of the shipment.

4. Comments Requested. We wish to ensure that any proposal we might approve represents an appropriate liability regime for individual homeowners who would be affected. Therefore, we seek comments, especially from individual shippers of household goods and organizations or government entities that represent their interests, concerning the Committee's new proposal and particularly the issues we outline below.⁷ We also seek additional information from the Committee, as discussed below.

A. 60-cents-per-pound Limitation. The limit of 60 cents per pound per article may no longer be appropriate if the estimated current average value of \$4.00 per pound of household-goods shipments is accurate. There may be some appeal to having low base rates with minimal carrier liability for shippers who want to insure their household goods through other means. However, the rates for separate insurance likely will be higher, with lower carrier liability,

⁶ Again, we note that a shipper that chooses a declared value that is lower than the replacement value of its household goods would not be able to replace all of its goods with new goods if the entire shipment were destroyed or lost.

⁷ The Committee's proposal is the result of collective action by its members pursuant to 49 U.S.C. 13703. The Committee's request for renewed Board approval of (and resulting antitrust immunity for) discussing and taking actions collectively is currently pending before the Board. Our action in moving this proceeding forward is not intended to prejudice our disposition of the Committee's renewal request.

because insurers typically seek to recover from the carriers, to the extent of the carrier's liability. Thus, any savings to the shipper from continuing an unrealistically low 60-cents-per-pound-per-article limitation could be illusory. We request comments on whether and why we should allow a 60 cents-per-pound-per-article limit.

In addition, we have received informal complaints from household-goods shippers who, despite our clear rule on this matter, state that they did not knowingly request the 60-cents-per-pound limitation but were somehow deemed to have selected it. Therefore, we also request comments on ways to better ensure that shippers make informed, conscious decisions regarding the level of carrier liability and understand any applicable limitations to liability.

B. Use of Deductibles. Under the proposal, if a shipper chooses a rate that includes a deductible, a carrier might lack a liability-based incentive to exercise reasonable care to avoid minor damages to shipments. We request comment on this aspect of the proposal.

C. Elimination of Actual (Depreciated) Value Option. We are concerned that the FVP proposal eliminates the current option under which motor carriers are liable for the actual (depreciated) value of the household goods in a shipment – the level of liability contemplated by the statute. We ask for comment on whether carriers should be allowed to eliminate this intermediate option.

D. Rate Levels. According to the Committee, today some 22.9 percent of FVP shipments result in paid claims. The Committee projects that 25 percent of FVP shipments under the proposed \$4.00-per-pound minimum would result in paid claims.⁸ We do not know if this

⁸ The Committee asserts that fewer claims were filed in the past because the \$1.25-per-pound minimum had the effect of discouraging claims for small losses. But current FVP shipments have not been subject to the \$1.25-per-pound minimum. Therefore, we question the Committee's assumption that there would be an increase in the amount of paid claims under the

projection is based on a trend of an increasing number of paid claims. If the expected increase in paid claims did not occur, the additional revenues generated would have the same effect as a rate increase. We ask the Committee to submit all supporting data, including work papers, associated with the proposed fees and the prediction that a higher percentage of FVP shipments will result in paid claims.⁹

E. Different Carrier Liability on Identical Shipments. We do not know if the Committee intends a difference in carrier liability for two otherwise identical shipments, one of which has a declared lump sum value and one of which does not. As worded, the proposal would seem to provide a different result. Under the Committee's proposed terms:

All shipments (other than those released to a value not exceeding 60¢ per pound per article) will be deemed released to a minimum lump sum value of \$5,000 or \$4.00 times the actual total weight (in pounds) of the shipment. If the shipper declares or releases the shipment to a valuation that falls between the valuation amounts shown, the next higher valuation amount and the applicable charge associated therewith will apply.

An example will illustrate our concern. There would be a different maximum amount of carrier liability on two identical shipments each weighing 4,000 pounds, with the same charge, depending on whether the shipper wrote in a declared value or left the line for a declared value

proposed new FVP option.

⁹ Concerning the supporting data, we seek an explanation of the basis for arriving at the proposed charges for each of the 19 levels shown in Table 5 of the application. It would be helpful to have information similar to that submitted by the Committee in Attachment No. 3 to its October 1992 application to amend earlier released rate orders (Nos. MC-505 and MC-672).

blank. If the shipper wrote in the figure \$16,000 on the blank for a declared value and the entire shipment were lost, the carrier could be liable for up to \$20,000 (if the shipper demonstrated that the replacement value of his lost goods were that high) because the chosen figure, \$16,000, “falls between the valuation amounts shown” on the carriers’ proposed table of charges. But if the shipper does not write anything in the blank for declared value, the declared value of this shipment would be deemed to be \$16,000 (\$4.00 x 4,000) and the shipper would pay the same valuation charge; however, the carrier’s maximum liability would be \$16,000 if the entire shipment were lost. We ask whether the Committee intended this disparate result and if so, whether that is appropriate.

F. Annual Adjustments. The Committee requests authority to affect annual adjustments in both the proposed minimum valuation per pound and the proposed valuation charges for shipments, based on changes in the “household furnishings and operations” item within the Consumer Price Index, U.S. City Average, published by the Bureau of Labor Statistics (BLS) of the United States Department of Labor. We understand that BLS has restructured the household furnishings and operations index, and that certain items frequently included in household goods shipments (televisions and sound equipment, for example) were moved to other indexes. We request additional justification from the Committee regarding the relevance of the proposed index, comparing the items included in the index with all the items commonly included in shipments of household goods. We invite comments regarding the merits of this or any other index that may be appropriate to establish adjustments in the minimum valuation of shipments and the corresponding charges. Additionally, we invite comments as to whether any methodology for adjusting minimum valuations of household-goods shipments should apply also to the carriers’ charges, as the relationship between the costs of providing a specific dollar

amount of carrier liability and changes in the value of household goods has not been explained.

5. Summary. We encourage interested persons to participate in this proceeding by submitting written data, views, or arguments for or against the proposed changes in the released rates authority for motor carriers of household goods. While we are interested particularly in receiving comments on certain issues, as discussed above, we invite comments on all aspects of the proposal. All comments and other materials referred to in this notice will be available for inspection and copying at the Board's address given above. Normal office hours are between 8:30 a.m. and 5:00 p.m., Monday through Friday, except holidays.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams

Secretary